

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION**

HOUSE JUDICIARY COMMITTEE

Date: Wednesday, February 4, 2009
Place: Capitol

Time: 8:00 am
Room: 137

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

HB 276, HB 293

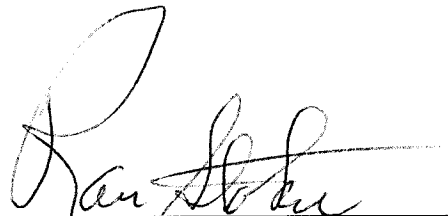
EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

HB 177 (DPAA) _____

HB 236 (Tabled) _____

COMMENTS:



REP. Ron Stoker, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 2/4/09

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Rep. Peterson	X	
Rep. Kottel	X	
Rep. Kerns	X	XXXXXXXXXX
Rep. Sands		X
Rep. Bennett	X	
Rep. MacDonald	X	
Rep. More	X	
Rep. Ebinger	X	
Rep. Wagner	X	
Rep. Becker	X	
Rep. Driscoll	X	
Rep. Regier	X	
Rep. McClafferty	X	
Rep. Howard	X	
Rep. Blewett	X	
Rep. Warburton	X	
Rep. Menahan	X	
Rep. Stoker	X	



HOUSE STANDING COMMITTEE REPORT

February 4, 2009

Page 1 of 2

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 177** (first reading copy – white) do pass as amended.

Signed: _____

Representative Ron Stoker, Chair

And, that such amendments read:

1. Page 1, line 11.

Following: "imposed"

Insert: "if the probationer or parolee complies with all the conditions imposed by the district court or the board"

Following: " ; "

Insert: "and"

2. Page 1, lines 13 through 15.

Strike: " ; and " on line 13 through "entirety" on line 15

3. Page 1, line 20.

Strike: "commits and is convicted of"

4. Page 1, line 21.

Following: "(a)"

Insert: "is charged with"

Strike: "or"

5. Page 1, line 22.

Following: "(b)"

Committee Vote:

Yes 18, No 0

Fiscal Note Required ☐

HB0177001SC.hjd

February 4, 2009
Page 2 of 2

Insert: "is charged with"
Strike: "is"
Insert: "could be"

6. Page 1, line 23.
Following: "months"

Insert: "; or"

(c) violates any condition imposed by the district court or
the board"

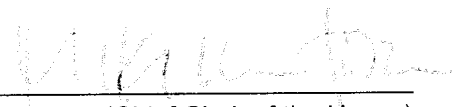
- END -

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE JUDICIARY COMMITTEE** TABLED **HB 236**, by motion, on **Wednesday, February 4, 2009**.

(For the Committee)



(Chief Clerk of the House)

(Time)



(Date)

February 4, 2009

Jennifer L. Eck, Secretary

Phone: 444-4832

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2/7/09 BILL NO. HB 236 MOTION NO. _____
 MOTION: _____

DO PASS HB 236.

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson		X	
Deborah Kottel	/		
Krayton Kerns		X	
Diane Sands	X		X
Gerald Bennett		X	
Margaret MacDonald	X		
Michael More		X	
Bob Ebinger	X		
Bob Wagner		X	
Arlene Becker	X		
Robyn Driscoll		X	
Keith Regier		X	
Edith McClafferty	X		
David Howard		X	
Anders Blewett	X		
Wendy Warburton		X	
Mike Menahan	X		
Ron Stoker		X	

8

10

**AUTHORIZED
COMMITTEE PROXY**

I request to be excused from the Justice

Committee because of other commitments. I desire to leave my proxy vote with:

L 177 Dec

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

BILL/AMENDMENT

AYE NO

[illegible][illegible]

Rep.

(Signature)

Date _____

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**Montana House of Representatives
Visitors Register**

JUDICIARY COMMITTEE

Date 2/4/09

Bill No. HB 276

Sponsor(s) Rep. Staker

PLEASE PRINT		PLEASE PRINT		PLEASE PRINT	
<i>Erin Maclellan</i> <i>William Duffield</i>		<i>MT Medical Assoc</i> <i>Phillips County</i>		<i>X</i>	<i>X</i>
Name and Address	Representing	Support	Oppose	Inf.	
<i>Dennis McCabe, Billings</i>	<i>Yellowstone County</i>		<i>X</i>		
<i>Mike McBaby</i>	<i>Beaverhead Co. / M.D.O.</i>		<i>X</i>		
<i>GREG CHILCOTT</i>	<i>RAVALLI Co. / MACO / URBAN COUNTIES</i>		<i>X</i>		
<i>Kern L. Burdick</i>	<i>Chouteau Co Sheriff</i>		<i>X</i>		
<i>Jay Bee</i>	<i>Yellowstone Co. Sheriff</i>		<i>X</i>		
<i>Dennis Paxinos</i>	<i>Yellowstone Co</i>		<i>X</i>		
<i>Leahla Maclellan</i>	<i>MT Co. Attorney</i>		<i>X</i>		
<i>Bob Gilman</i>	<i>MT Co. Attorney</i>		<i>X</i>		
<i>Cynthia A. Johnson</i>	<i>Pondera County</i>		<i>X</i>		
<i>Craig A. Hoffman</i>	<i>Pondera County</i>		<i>X</i>		
<i>Sandra Broesder</i>	<i>Pondera County</i>		<i>X</i>		
<i>David Castle</i>	<i>Cascade Co Sheriff</i>		<i>X</i>		
<i>Cheryl Clark</i>	<i>Roosevelt County</i>		<i>X</i>		
<i>Freedom Crawford</i>	<i>Sheriff Roosevelt</i>		<i>X</i>		
<i>Frank Smith</i>	<i>CITIZEN</i>		<i>X</i>		
<i>David Banker</i>	<i>Valley County</i>		<i>X</i>		
<i>John Jensen</i>	<i>Fergus County</i>		<i>X</i>		
<i>Jean Adams</i>	<i>Fergus + Petroleum Co</i>		<i>X</i>		
<i>Michael W. Duffield</i>	<i>MT Co. Attorney</i>		<i>X</i>		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Brian Warden

Mike Foster

Tom Ebzery

Sheryl Wood

St. Peter's Hosp

Catholic Hospitals

*SVH
MACO*

X

X

X

X

X

X

↓

Date 2/4/09

PLEASE PRINT

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**Montana House of Representatives
Visitors Register**

JUDICIARY COMMITTEE

Date 2/4/09

Bill No. HB 293

Sponsor(s) Rep. Hiron

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Dennis McLaughlin	Yellowstone Co. MSN, PDS	✓		
Mike McGinley	Beauregard Co / MACO			
Kern Zandick	Chouteau Co Sheriff	X		
Jay Bell	Yellowstone Co. Sheriff's Office	X		
ALDO CALLACHER	MT CO. MOUNTAIN / ZIC	✓	X	
David Castle	Sheriff Cascade	✓		
Stephen Clark	Roosevelt County			
Frederick Crawford	Sheriff Roosevelt			
Wayne Tarnas	POST Council			X
JOHN ANTONIETTI	VFW	✓		
Jim Jackson	American Legion	✓		
Jim Smith	Sheriff / City Atty		X	
Dave Schulz	Madison Co	X	X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA ASSOCIATION OF COUNTIES

*Additional
Document*

2715 Skyway Drive
Helena, MT 59602-1213
(406) 444-4360
Fax (406) 442-5238
e-mail: maco@maco.cog.mt.us

Mr. Mark Taylor
Montana Hospital Association
1720 Ninth Avenue
PO Box 5119
Helena, MT 59604-5119

September 5, 2008

Mr. Taylor,

Thank you for attending the meeting to work towards an agreement to resolve the issue of responsibility for medical costs of individuals who are injured during the course of interaction with law enforcement, but who have not been charged or arrested.

As discussed during the meeting, there are a number of both fiscal and legal questions that must be answered in order to begin development of a solution to this issue. The ultimate goal, as discussed, would be to develop language that could be incorporated into agreements with the hospitals and the applicable agencies. Below is a brief overview, which certainly may not be all inclusive, of the issues that need to be considered and/or addressed:

Hospital Association Concerns:

1. Arresting agencies accepting responsibility for the medical costs of the treatment of individuals injured during the course of interaction with law enforcement.
2. Security being provided for individuals who pose a significant threat to the safety of the medical center staff, visitors and/or patients.
3. How to address the issue of transfer agreements.
4. Hospitals inability to release medical condition information to law enforcement due to state and federal regulations.

County and other stakeholder concerns:

1. To create a new class of people, i.e., "detainee" possesses a wealth of potential liability issues regarding the infringement upon the rights and protections of individuals provided by the Constitution and State and Federal law.
2. Counties should not be held liable for costs resulting from the actions of other law enforcement agencies.
3. Agencies should not be responsible for the costs of medical treatment for self inflicted injuries or preexisting conditions, or injuries sustained by the individual during the commission of a crime, while unlawfully resisting arrest, or attempting to avoid arrest.
4. Mutual aid agreements/jurisdictional issues – who has responsibility?
5. Potential loss of 3rd party payor options (Medicare, Medicaid, Social Security, etc)
6. Concerns regarding definitions and applicability of the following terms:
 - a. Detainee
 - b. Interaction
 - c. Custody
7. Access to medical information regarding an individual's general physical condition, to determine the ability to charge the individual with a crime and allow them their rights to due process.

8. Statistical data is needed to determine severity of the problem:
 - a. Which agency (state or local) initiated the request for medical treatment;
 - b. What was the medical treatment as a result of (law enforcement, individual negligence, sustained during the commission of a crime, etc);
 - c. What are the actual costs that the hospitals are incurring that are unpaid;
 - d. What remedies has the hospital pursued for collection of the debt prior to billing the agency;
 - e. What are the overall fiscal impacts on the stakeholders to begin to develop a plan for cost allocation and funding solutions?

As is evidenced above, there are many issues that need to be thoroughly reviewed and evaluated prior to any language being drafted. We would propose that a working group be formed to gather the necessary information and to begin working towards finding a solution. As was also discussed, local law enforcement officers are generally enforcing state statutes, and individuals are being charged with violating state laws. Therefore, we believe it is imperative to have state agencies represented on the working group.

We would propose that this group begin meeting this fall and continue to work as needed in an effort to come to a consensus decision.

We would propose the working group consist of representatives from the following organizations/agencies:

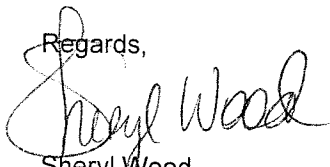
Hospitals (number of your choosing)
Montana Association of Counties
MACo JPIA Property & Casualty Insurance Pool
County Commissioners
County Sheriffs and Peace Officers
County Attorneys
Montana Department of Corrections
Montana Department of Justice
Montana Attorney General
League of Cities and Towns
Montana Association of Chiefs of Police
Others?

As we are looking at a combination of solutions, including statutory appropriations, permissive mill levies and/or insurance pool concepts, as well as the impacts from the law enforcement, legal and insurance perspectives, we believe it is important to have all agencies and organizations involved in the discussions.

As part of this proposal, if accepted, it would be mutually agreed amongst the parties that any pending or future legislative proposals be withdrawn and not pursued until this working group has developed a report of their findings and recommendations.

We look forward to renewing our partnership with the Hospital Association to work towards a mutually acceptable method to resolve these issues. Please don't hesitate to contact me if you have questions or need more information.

Regards,



Sheryl Wood
Associate Director

Lane, Valencia

From: Bob Olsen [bob@mtha.org]
Sent: Friday, September 12, 2008 1:18 PM
To: Lane, Valencia
Subject: Detainee Bill drart
Attachments: 380131 (4).doc

Valencia

I've attached the latest draft bill for the detainee medical cost issue. Is it possible for you to distribute the bill to committee members? I don't have access to their emails from my laptop. Thanks in advance for your help!

Bob Olsen
Vice President
MHA
457-8004

9/12/2008

***PERSONS INJURED AS A RESULT OF DIRECT INTERACTION
WITH LAW ENFORCEMENT***

Draft Bill Agreed Upon Concepts:

1. This bill applies to a person who is not legally an "inmate" and therefore the provisions of Mont. Code Ann. § 7-32-2245 does not apply. The bill does apply to a person in the custody of law enforcement pursuant to MCA 46-1-202.
2. This bill does not substantially alter the current relationship and corresponding legal obligations between cities and counties for payment of inmate/prisoner/etc. medical costs. Mont. Code Ann. § 7-32-2245 and other statutes remain in full force and effect. The bill amends this section to streamline the process for paying hospitals and medical providers.
3. This bill recognizes the difficulties and appreciates the sensitivities of if, how, and when a person becomes an "inmate" under Mont. Code Ann. § 7-32-2245, but at the same time provides a financial mechanism to ensure law enforcement (at all levels – city, county, and state) are free to do their jobs without concern for who is going to be responsible for payment of medical costs for a person who has sustained injuries as a result of direct interaction with law enforcement during or incidental to the commission of a crime (or while in custody).
4. This bill would still place primary responsibility on the individual to pay for medical costs as those are defined in the bill. The only thing the state would be responsible for is the unreimbursed medical costs associated with the person's direct interaction with law enforcement, when those costs exceed \$10,000 per case.
5. The funding mechanism is a new statutory appropriation to be administered by either the Department of Justice or Department of Administration – Risk Management & Tort Defense Division.
6. Deference to Valencia Lane on codification instruction and other drafting suggestions.

NEW SECTION. **Section 1. Medical costs -- payment. (1)**

This section applies to a person who does not constitute an inmate under 7-32-2245, but who is in the custody of a law enforcement officer pursuant to MCA 46-1-202, is under arrest or would likely be placed under arrest except for the need for immediate medical attention.

(2) Except as specified in (4) if a person meeting the threshold set forth in subsection (1) requires medical treatment, that person is responsible for costs incurred by a hospital or medical provider for the medical treatment. These medical costs include costs associated with:

(a) a person's illness or condition that began or injuries that were sustained before the person's direct interaction with a law enforcement officer;

(b) self-inflicted injuries while in custody;

(c) injuries incurred during the commission of a crime or while unlawfully resisting arrest or attempting to avoid arrest, including injuries sustained in a high-speed chase; and

(d) additional security costs incurred by a hospital while the person is receiving medical treatment; and

(e) any other injuries or illnesses that are not the responsibility of another person.

(3) If a person is found to be able to pay for the person's medical costs, as provided in subsection (2), the hospital and the medical provider that treats the person shall collect the cost of the treatment from the person or may pursue reimbursement from a third-party payor for the services provided.

(4) The county is responsible for reimbursing the hospital and the medical provider for services, including security costs, incurred by the hospital and the provider in the treatment of:

(i) a person's condition or injury that is directly attributable to the person's interaction with a law enforcement officer, including, but not limited to, gunshot wounds, fractures, open wounds that require suture or other crushing injuries.

(ii) A request by the county or law enforcement officer for drug or alcohol testing;

(iii) A request by the county or law enforcement officer for a medical screening examination prior to incarceration. The county responsible for reimbursing the hospital or the provider for services rendered is the county in which the interaction with the law enforcement officer originated. Reimbursement under this subsection shall be within 30 days at the medicaid reimbursement rate or at a rate that is 70% of the provider's customary charges, whichever is greater.

(5) If the hospital or provider is reimbursed by the person or the third-party payor after the hospital or physician has been reimbursed by the state, the hospital and physician shall refund to the state the amount that the hospital or physician had been paid by the state for the services provided to the detainee.

(6) Inability to pay may not be a factor in providing necessary medical care.

(7) This section does not restrict a person's right to use a third-party payor.

(8) The county may seek reimbursement of medical costs from the state that exceed \$10,000 per case pursuant to [New Section 3].

(9) As used in this section, the following definitions apply:

(a) "Hospital" means a critical access hospital as defined in 50-5-101 or a hospital as defined in 50-5-101.

(b) "Provider" means a physician, advance practice registered nurse or physician assistant.

[IS THERE A NEED TO DEFINE LAW ENFORCEMENT OFFICER AS USED IN THIS SECTION?]

Section 2. Section 17-7-502, MCA, is amended to read:

17-7-502. Statutory appropriations -- definition --
requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-

409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 90-9-306; and section 2, Chapter 6, Special Laws of May 2007. **[NEED TO INSERT SECTION 3 IN THIS PROVISION DEPENDING ON CODIFICATION INSTRUCTION.]**

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less;

pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of terminates upon the death of the last recipient eligible under (2) for the supplemental benefit provided by ; pursuant to sec. 10, Ch. 6, Sp. L. May 2007, the inclusion of section 2, Chapter 6, Special Laws of May 2007, terminates July 1, 2008; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 is effective July 1, 2008, and terminates June 30, 2009.)

NEW SECTION. **Section 3. Special revenue account to fund medical costs -- statutory appropriation.** (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the *[department of administration/department of justice?]* to fund certain medical costs pursuant to [section 1].

Section 4. Section 7-32-2245, MCA, is amended to read:

7-32-2245. Payment of confinement and medical costs by inmate. (1) An inmate found by the sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of the inmate's confinement in a detention center. The rate for confinement costs must be

determined in accordance with 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.

(2) If an inmate requires medical treatment, the inmate is responsible for medical costs associated with:

- (a) preexisting conditions;
- (b) self-inflicted injuries while in custody;
- (c) injuries incurred while in custody if the injuries are not the result of negligent or intentionally torturous acts committed by the detention center administrator or a member of the administrator's staff;
- (d) injuries incurred during the commission of a crime or while unlawfully resisting arrest or attempting to avoid an arrest; and
- (e) any other injuries or illnesses that are not the responsibility of other entities as provided in 7-32-2224 and 7-32-2242(3).

(3) (a) If an inmate is found to be able to pay for the inmate's medical costs, as provided in subsections (1) and (2), the health care provider who treats the inmate shall collect the cost of the treatment from the inmate or the detention center administrator may arrange with the health care provider to pursue reimbursement from a third-party payor for the services provided.

(b) If the health care provider determines that it is unable to collect from the inmate or third-party payor ~~within 120 days from the date of the service~~, the county is responsible for reimbursing the health care provider within 30 days for the services at the medicaid reimbursement rate or at a rate that is 70% of the provider's customary charges, whichever is greater; or

~~—(ii) a negotiated rate.~~

(c) If the health care provider is reimbursed by the inmate or the third-party payor after the provider has been reimbursed by the county, the provider shall refund to the county the amount that the provider had been paid by the county for the services provided to the inmate.

(4) Inability to pay may not be a factor in providing necessary medical care for an inmate.

(5) This section does not restrict an inmate's right to use a third-party payor.

(6) If a city or town is the arresting agency and commits a person to the detention center of the county in which the city or town is located, the inmate is responsible for the inmate's medical expenses and the provisions of this section apply.

NEW SECTION. **Section 5. {standard} Codification**

instruction. (1) [Section 1] is intended to be codified as an integral part of Title [?], chapter [?], part [?], and the provisions of Title [?], chapter [?], part [?], apply to [section 1].

(2) [Section 3] is intended to be codified as an integral part of Title [?], chapter [?], part [?], and the provisions of Title [?], chapter [?], part [?], apply to [section 3]

NEW SECTION. **Section 6. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Applicability.** [This act] applies to medical costs, as provided in [section 1] incurred on or after [the effective date of this act].

Wood, Sheryl

From: Bob Olsen [bob@mtha.org]
Sent: Friday, September 12, 2008 4:07 PM
To: Wood, Sheryl; Taylor, Mark; PBucy@luxanmurfitt.com; Blattie, Harold; Lane, Valencia; Smith, Jim ; mlct@mt.net
Cc: astiamyd@benefis.org; Grmoljez, Aimee; Ebzery, Tom; Brown, Dick; John Flink; Michael.Foster@svh-mt.org; Laslovich, Jesse; Vicky Simonson
Subject: RE: Draft Concepts/Bill Language, Sept 12



MHA Response to
MACO.doc

Sheryl

As I promised, MHA's response to the MACO proposal is enclosed. We only a few minutes ago completed our internal meeting! We are continuing to work on the draft legislation, as we believe that is our best bet to meet the concerns of the parties involved, and to respond to the concerns posed by the legislators. I included you in the mailing of our most recent draft to provide you with the greatest amount of time to look it over and prepare your thoughts.

Our letter does not reject your proposal out of hand. We will welcome a draft agreement that MACO believes will meet both our and county needs. We don't believe that a working group is required to address the issues, our reasons are reflected within our letter.

I'm looking forward to your comments and suggested changes to the latest draft.

Bob Olsen
Vice President
MHA
457-8004

-----Original Message-----

From: Wood, Sheryl [mailto:swood@maco.cog.mt.us]
Sent: Friday, September 12, 2008 3:23 PM
To: Bob Olsen; Taylor, Mark; PBucy@luxanmurfitt.com; Blattie, Harold; Lane, Valencia; Smith, Jim ; mlct@mt.net
Cc: astiamyd@benefis.org; Grmoljez, Aimee; Ebzery, Tom; Dick Brown; John Flink; Michael.Foster@svh-mt.org; Laslovich, Jesse; Vicky Simonson
Subject: RE: Draft Concepts/Bill Language, Sept 12

Bob,

I can't tell you how disappointed we are to receive this message. Given your email and the attached proposed new bill draft, I must assume that this is your indirect rejection of our proposal. I have attached a copy of our proposal for the benefit of those on this email list that may not have seen it.

We were certainly hoping to work towards a resolution that would address all the issues for both parties and avoid the conflict. The offer is still open to work together on a solution.

Regards,

Sheryl Wood

-----Original Message-----

From: Bob Olsen [mailto:bob@mtha.org]

Sent: Friday, September 12, 2008 1:14 PM

To: Taylor, Mark; PBucy@luxanmurfitt.com; Blattie, Harold; Lane, Valencia; Smith, Jim ; mlct@mt.net; Wood, Sheryl

Cc: astiamyd@benefis.org; Grmoljez, Aimee; Ebzery, Tom; Brown, Dick; John Flink; Michael.Foster@svh-mt.org; jesselaz@yahoo.com; Vickey Simonson

Subject: RE: Draft Concepts/Bill Language, Sept 12

Here is the most recent draft legislation. The high speed chase issue is not yet resolved, and could end up deleted from the bill.

Bob Olsen
Vice President
MHA
457-8004

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AN ASSOCIATION OF
MONTANA HEALTH
CARE PROVIDERS

September 12, 2008

Sheryl Woods, Associate Director
Montana Association of Counties
2715 Skyway Drive
Helena, MT 59602-1213

Dear Ms. Woods:

Thank you for your September 5, 2008 correspondence regarding medical payments for persons in custody. Your delineation of concerns nearly, but not completely, identifies our concerns. We also appreciate the suggestion that counties and hospitals enter into agreements to guide applicability and compensation for medical services.

MHA does not believe that a new working group is required to address our concerns. We are disappointed that MACO has not offered any changes to the language in our draft legislation. However, we would welcome any draft language for an agreement from MACO that will address our mutual concerns. An agreement should:

- List the services and medical treatments to be covered by the county;
- Specify any proposed rates;
- Recognize existing transfer arrangements among hospitals; and
- Specify the process for communication personal health information.

We expect that moving forward toward agreements means that all 56 counties are willing to enter into a model agreement with the hospitals.

MHA remains committed to the basic premise for our legislation. Counties are liable under current law for certain medical services delivered to persons in the custody of law enforcement. This is true whether or not charges have been filed or a formal process of arrest has been made. We believe this is the case, at least in part, by the decision of the Montana Supreme Court, in *Montana Deaconess Medical Center v. Johnson*, 1988.

In their decision, the Court determined, "A county is the largest subdivision of the state. Section 7-1-2101, MCA. Consequently, the county is vested with the primary responsibility of enforcing the laws of the state and maintaining facilities in furtherance of that task. See, SS 7-4-2716, 7-32-2201, MCA. Sound reasoning dictates the performance of the county's task necessarily includes the assumption of the associated financial burden.

We, therefore, hold that the county is financially responsible for medical costs incurred by a detained person ultimately charged with the violation of state law but who is unable to pay."

Hospitals report that in many situations law enforcement and county officials deny responsibility for payment, causing the hospitals to incur higher uncompensated costs. The situation is frustrating and is straining the relationship between local hospitals and law enforcement agencies.

The hospitals seek to clarify the existing legal liability as a means of ending the "cat and mouse" game of cost avoidance. As one hospital manager described a recent case, "The patient was in handcuffs and the police officer in the exam room during medical care. The officer is stating that the person is not in custody while the county is faxing a statement denying liability since the person was not an inmate."

A careful reading of our bill should lead the reader to conclude that the proposal does not make the county responsible for pre-existing conditions, injuries sustained during the commission of a crime or any other medical conditions. The bill does not relieve a person in custody from any personal liability or for coverage that might be available from a third party.

MHA has recognized that counties fear additional medical costs. But these costs are the legal responsibility of the county. It is not rational to determine that the counties should not be required to meet their legal responsibilities merely because they haven't the money in their current budget. In any case, we are attempting to address this issue by way of a statutory appropriation.

The success of this proposed legislation will depend in part on support by MACO. Killing the bill will only leave the counties still exposed to the cost under current law, without any method for state funding.

MHA continues to invite your suggestions to improve this draft legislation.

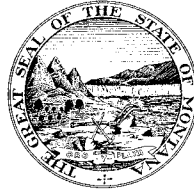
Sincerely,

A handwritten signature in dark ink, appearing to read "Dick Brown". The signature is written in a cursive, slightly slanted style.

Richard Brown
President

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



CAPITOL BUILDING - P.O. Box 200802
HELENA, MONTANA 59620-0802

MEMORANDUM

To: Representative Stoker
Members of the Judiciary Committee

From: David Ewer, Budget Director

Re: Opposition to HB 276, Clarify responsibility for persons injured
by law enforcement

Date: February 4, 2009

Dear Representative Stoker and members of the committee: Given budget constraints, I respectfully go on record as opposing HB 276 for fiscal reasons. My opposition is not based on any intrinsic merits of HB 276.

The Executive Budget currently has a structural surplus, however, unlike the 2007 Session, which had over \$80 million in projected revenues over the Administration's ongoing general fund expenditure proposals, the current budget is very tight. While the Administration insisted on a spending cap to preserve the structural surplus of \$80 million, the modification or rejections of some Administration proposals created substantial fiscal 'space' for other legislative priorities.

The Schweitzer Administration fully understands and respects the legislative process and a legislator's prerogative to achieve any legislation he or she so desires. Given that it is very early in the 2009 session and this bill's hearing date, it is certain that the legislature will take later action that will either free up or additionally constrain budget capacity. But again, the importance of maintaining a basic level of public safety, health, and education service levels require this opposition.

This letter is intended to benefit, not impede communications. I am eager for any feed back as to how we can maximize effective communications.

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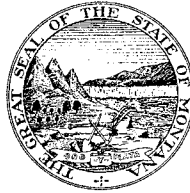
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